

NORTH SAN RAFAEL COALITION OF RESIDENTS



POST OFFICE BOX 6642. SAN RAFAEL. CALIFORNIA. 94903
WWW.94903COMMUNITY.ORG

July 17, 2011

Via Email

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Proposed Rights-of-Way Notice of Inquiry, FCC 11-51, Docket No. 11-59

Dear Chairman Genachowski:

On behalf of the residents in zip code 94903 located in Marin County, California, we are responding to your inquiry regarding whether there is a need for coordinated national action to improve rights of way and wireless facilities siting policies.

We vehemently assert that there is a crucial need for national action in this matter. We advocate a thorough, long-lasting solution. Strategically it makes sense, of course, to take the "high ground" for maximum effectiveness. And in the case of wireless telephony, that would mean one national infrastructure and satellite technology, not a "forest" of different towers in our public rights of way. Another option already being implemented is WiMAX service - - high speed over the air broadband service for your computer, home or office which covers an entire city or county - - was rolled out in more than 100 U.S. metropolitan areas in 2009 and 2010.

Ground based solutions---such as fiber-optic cabling and distributed network systems of cell towers---devalue property and are not sustainable. They are wasteful, redundant, unsightly, impede pedestrians' rights of way, expensive to install and maintain, slow to deploy, out-moded, and unsafe on 50-year old wooden poles.

Our community underwent the attempted installation of a 60' cell/data tower within 20' of a bedroom on a national holiday weekend without the knowledge or consent of the City, County or community. The interested parties and project description are attached as Appendix A. What follows here describes ExteNet's attempt to bypass local regulation, as testified to by the North San Rafael Coalition of Residents representative at the Loeven & Associates, LLC public hearing re T-Mobile Site BA10002, project ID 10-0342:

We learned from USA North that Applicant/ExteNet and its subcontractor, Western LightWave, Inc., were planning to excavate Cedar Hill Drive, City of San Rafael, CA on Monday, January 17, 2011, a national holiday, without the



necessary City permits. See attached Ticket Text, Appendix B, which clearly states

“Permit Type: COUNTY; Number: PENDING.”

We are unaware of a County permit status of “pending,” or why it would be used in the City. The ExteNet website also identified this location and asserted that no permits were needed from the City, even though they had been advised in writing by the City in late 2010, see Appendix C. The City ordered the trenching halted.

As you can see, to date, the community’s experience with ExteNet and its subcontractor, Western LightWave, Inc., has been highly traumatic. See attached Appendices D and E, “What A Weekend! How Would You Like a 60’ Tower in Your Backyard?” and “Tuesday evening, January 18, 2011 Report to the Community.”

We do not want to stop modern telecommunications, but such installations must not adversely impact the surrounding neighborhood or view corridors. Local regulations shall establish siting preferences. One size does not fit all. See City of San Rafael 2005 Telecommunications Ordinance attached as Appendix F.

Unified community action was able to stop the disastrous and illegal infrastructure. The deployment issues are not limited to the problems of geography or carrier policies or technology. Our community has reached the following conclusions:

1. State and local authorities must be recognized because citizens and their representatives are protected by fundamental due process. Categorical pre-emption may be illegal and subject to challenge.
2. In lieu of uniform ordinances, the most protective and precautionary ordinance in the region must be applied in zoning matters.
3. The Federal Telecommunications Act of 1996 preserves local zoning of such towers, and must continue to do so. Also see Appendix G, “Email from Patti Ringo to Ray Lorber dated January 25, 2011 re Regulatory Requirement Request.”
4. One infrastructure provider (and only one) must accommodate various carriers.
5. The siting of the infrastructure must meet the unique setting, requirements and needs of the community.
6. The impacted communities must be engaged and consulted and the public must be allowed ample time to do so.
7. Shot clocks negatively impact the community’s ability to thoughtfully respond to the necessary zoning requests.
8. Providers of infrastructure must be accountable for their subcontractors; no excuses.

Our experiences have dramatically demonstrated that State and local regulation/control of broadband infrastructure is necessary, desirable and advantageous to all

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stakeholders. As a result of the attempted ExteNet deployment, our specific concerns are itemized in Appendix H.

Thank you for this opportunity to relate our shocking and traumatic broadband deployment experiences in order to help you foster improvements. We appreciate your attention to this, and for keeping us informed in the future. We look forward to continuing a quarter century of collaboration and cooperation to ensure quality in our built environment.

Very truly yours,

Carolyn Lenert
Council Chair
415-499-9234

Encs.

cc:

California Public Utilities Commission w/encs.
Marin County Board of Supervisors (individually) w/encs.
Rick Fraites, 1st District Supervisor's Aide w/encs.
David Zaltsman, Marin Deputy County Counsel w/encs.
Farhad Mansourian, Director of Marin County Department of Public Works, Land Use & Water Resources w/encs.
Brian Crawford, Director of Marin County Development Agency
Nancy Mackle, City Manager of City of San Rafael w/encs.
Jim Schutz, Assistant Manager of City of San Rafael w/encs.
Nader Mansourian, City of San Rafael Director of Public Works w/encs.
Kraig Tambornini, Senior Planner, City of San Rafael w/encs.
Jonathan Kramer, Consultant for City of San Rafael w/encs.
City of Novato Planning Department w/encs.
League of California Cities w/encs.
North San Rafael Coalition of Residents Council w/encs.

Schedule of Attachments



- A Interested Parties and Project Description
- B Ticket Text
- C City of San Rafael Planning Department letter from Kraig Tambornini to ExteNet consultant Rich Hirsch dated December 22, 2010.
- D “What A Weekend! How Would You Like a 60’ Tower in Your Backyard?”
- E Tuesday, January 18, 2011 Report to Community
- F City of San Rafael’s 2005 Telecommunication Ordinance
- G Our Community Concerns**
- H Email from Patti Ringo to Ray Lorber dated January 25, 2011 re Regulatory Requirements Request



ATTACHMENT A – Interested Parties and Project Description

The parties involved are:

Name of Applicant: Director/Municipal Relations-Western Region Patti Ringo, ExteNet Systems, LLC, 3030 Warrenville Road, #340, Lisle, IL 60532, 909-708-3835; 805-404-4202; paring@extenetsystems.com; consultant Rick Hirsch, 415-377-7826; rickalep@gmail.com

Name of Contractor: Western Lightwave, Inc., 33490 Bailey Park Blvd. Menifee, CA 92584, 951-757-7255, 951-672-9376; 1731 Leslie Street, San Mateo, CA 94402, 650-266-9933; President James Roberts, jroberts@westernlightwave.com

Project ID: UP11-020 (ED11-024)

City of San Rafael Planner: Kraig Tambornini, Senior Planner, 1400 Fifth Avenue, San Rafael, CA 94901; 415-485-3092

Date of Application: November 16, 2010; continuing to date.

Date of Incident: January 14-17, 2011 (Martin Luther King national holiday weekend)

Property Addresses: public rights of way (see Attachment 1-map)

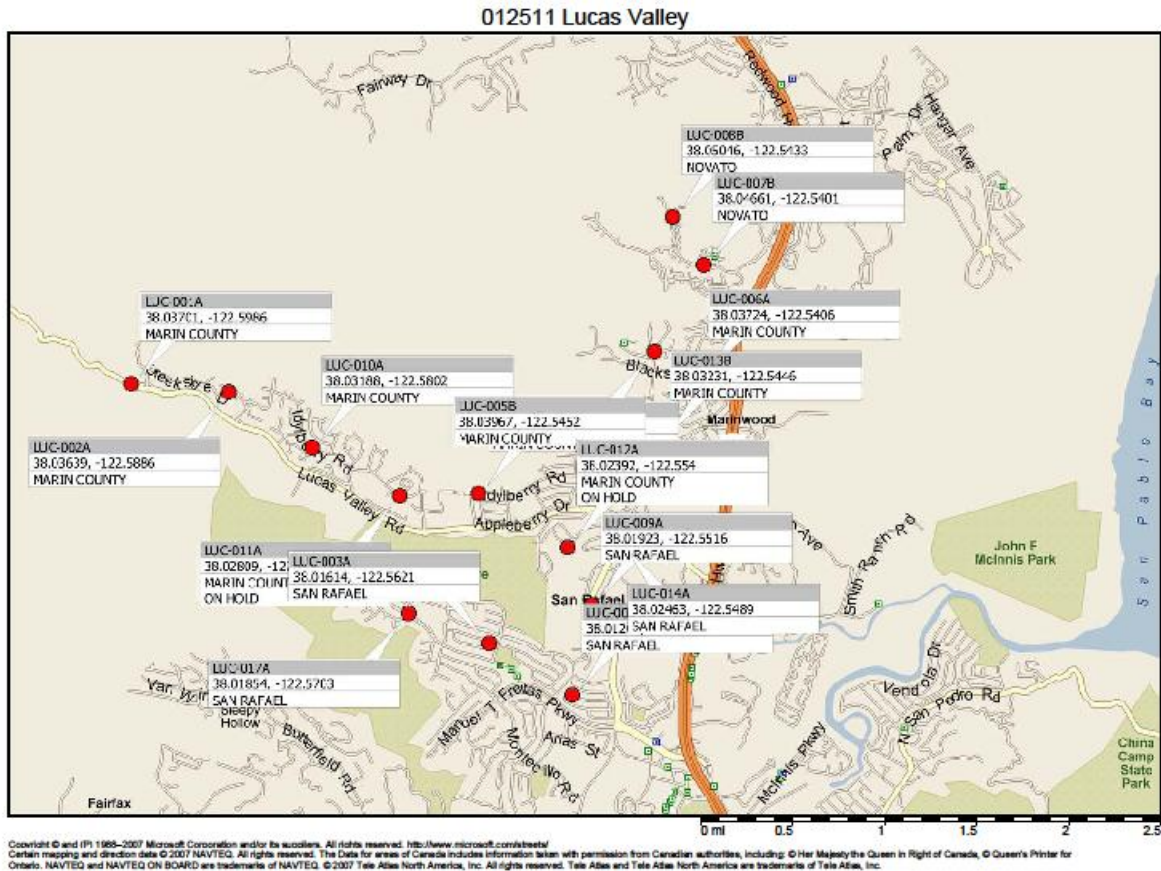
1. 410 to 511 Cedar Hill Drive, San Rafael, CA 94903 (trenching to proposed tower)
2. 714 Penny Royal Lane, San Rafael, CA 94903 (x Pine Lane)
3. 459 Hibiscus Way, San Rafael, CA 94903 (Hickory Lane)
4. 7 Montevideo Way, San Rafael, CA 94903 (x Parkridge Road)
5. 5 Coast Oak Way, San Rafael, CA 94903 (x Cedar Hill Drive; proposed tower location)
6. 873 Del Ganado Road, San Rafael, CA 94903 (x Duran Drive)
7. 1959 Las Gallinas Avenue, San Rafael, CA 94903 (plus 3 additional locations)
8. 2 Silver Pine Terrace, San Rafael, CA 94903
9. 17 & 26 Creekside Drive, San Rafael, CA 94903
10. 1276-1277 & 1134 Idylberry Road, San Rafael, CA 94903
11. One Mt. Susitna Court, San Rafael, CA 94903

Project Description with Map: ExteNet Systems (California) LLC proposes to install a Distributed Antenna System (“DAS”) telecommunication network within the County of Marin. DAS networks provide telecommunication transmission services to wireless service providers. These services allow wireless service providers to establish or expand their network coverage and capacity. A DAS network consists of a series of telecommunication antennas and associated equipment boxes, typically mounted on existing wooden utility poles within the public right-of-way. The antennas and equipment boxes are mounted on the same pole. These pole-mounted antennas and equipment boxes are referred to as “nodes.” Four such “nodes” within the Marin County system are proposed to be located within the City of San Rafael. (The other nodes

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within the system are proposed to be located in the unincorporated County as well as a few in the City of Novato.) The nodes are linked by fiber-optic cable that is typically routed aerially from pole-to-pole. In some cases, “micro-trenching” is needed to route the fiber-optic cable where there is no overhead infrastructure available. The fiber-optic cable is typically connected to the intended wireless service client’s equipment hub.



Director of North San Rafael Coalition of Residents, current Director of Mont Marin-San Rafael Park Neighborhood Association: Ray Lorber, 5 Upper Oak Drive, San Rafael, CA 94903; 415-479-9127; raylorber@yahoo.com

Chair of Council of North San Rafael Coalition of Residents: Carolyn Lenert, 779 Del Ganado Road, San Rafael, CA 94903; 415-496-2951; carolynlenert@msn.com

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ATTACHMENT B – Ticker Text

IRTH One Call
Page 1 of 2

Ticket Text

Message Number: 0012673 Received by USAN at 03:58 on 01/12/11 by SAC

Work Begins: 01/17/11 at 08:00 Notice: 027 hrs Priority: 2
 Night Work: N Weekend Work: N

Expires: 02/09/11 at 23:59 Update By: 02/07/11 at 16:59

Caller: JAKE LEVON
 Company: WESTERN LIGHTWAVE INC.
 Address: 1731 LESLIE ST
 City: SAN MATEO State: CA Zip: 94402
 Business Tel: 650-286-9833 Fax:
 Email Address: JKLEVON@WESTERNLIGHTWAVE.COM

Nature of Work: DIRECTIONAL BORING FOR UNG FACILITIES
 Done For: EXFANET SYSTEMS Explosives: N
 Operator: CALLER
 Field Tel: Call Tel: 809-708-3835
 Area Remark: Y Framework Method: WHITE PAINT
 Term: Type: COUNTY Number: PENDING
 Use / Per Equip Use In The Approx Location Of Member Facilities Requested: Y
 Excavation Enters Into Street Or Sidewalk Area: Y

Location:
 Street Address: CEDAR HILL DR
 Cross Street: CONST OAK WAY
 WORK IN ON ENT ST & SIDEWALKS FR ADDR: 410 TO ADDR: 511 ON CEDAR HILL DR

Place: SAN RAFAEL County: MARIN State: CA
 Long/Lat Long: -122.554784 Lat: 38.021224 Long: -122.547464 Lat: 38.026407

Sent to:
 CYSRF = CITY SAN RAFAEL SRSD COMSRF = COMCAST-SAN RAFAEL
 LGRSD = LAS GALLINAS VLY & S MARINU = MARIN MUNI WTR
 PGRSMN = PACIFIC BELL MARIN PGRSRF = PGE DISTR SAN RAFAEL

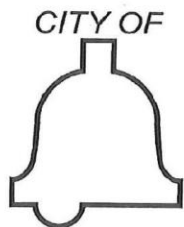
Member/Utility	Main Contact#	Vacuum Contact#	Emergency Contact#	After Hours Contact#
CITY SAN RAFAEL SRSD	(415) 485 - 3335			
COMCAST-SAN RAFAEL	(707) 590 - 6420			
LAS GALLINAS VLY & S	(415) 472 - 1734		(415) 747 - 7025	(415) 747 - 7026
MARIN MUNI WTR	(415) 945 - 1534	(415) 945 - 1162	(415) 945 - 1162	(415) 945 - 1162
PACIFIC BELL MARIN	(510) 645 - 2929	(510) 645 - 2929	(510) 645 - 2929	(800) 332 - 1321 x 011
PGE DISTR SAN RAFAEL	(800) 743 - 5000 x 00	(800) 743 - 5000	(800) 743 - 5000	(800) 743 - 5000

The information contained herein ("Data") is provided to the recipient exclusively for informational purposes in response to a request by the recipient. Underground Service Alert of Northern California and Nevada, a California nonprofit mutual benefit corporation ("USA North"), makes absolutely no representations or warranties whatsoever, whether expressed or implied, as to the accuracy, thoroughness, value, quality, validity, suitability, condition or

<http://usanorthmapping.com/IRTHOneCall/Centers/USANProtonFriendlyMemberContact...> 1/17/2011



ATTACHMENT C - City of San Rafael Planning Department letter from Kraig Tambornini to Rich Hirsch, Extenet consultant dated December 22, 2010



San Rafael

Mayor
Albert J. Boro

Council Members
Greg Brockbank
Damon Connolly
Barbara Heller
Marc Levine

December 22, 2010

Rich Hirsch
2001 McAllister Street #238
San Francisco, CA 94118

Email: rickaicp@gmail.com

RE: PA10-004 - ExteNet Systems; Use of City Right of Way by Telephone Corporation for Wireless Telecommunications Facility

Dear Mr. Hirsch:

Thank you for your pre-application submittal to the Community Development Department, Planning Division on November 16, 2010, requesting review of a proposal to install telecommunications equipment onto existing PG&E Utility Poles in the public right of way (e.g., Lucas Valley Network). Based on review of this request, the City of San Rafael has determined that the project is subject to the following:

- ExteNet Systems claims to have a Certificate of Public Convenience and Necessity (CPNC) issued by the California Public Utilities Commission (PUC), which is required for a telephone corporation. Public Utilities Code section 7901 provides a franchise to telephone corporations to use public rights of way. Therefore, local franchise agreement requirement would not apply (as per *San Rafael Municipal Code (SRMC) Chapter 10.74 - Telecommunications*).
- An Encroachment Permit will be required for work in the Public Right of Way. Encroachment permits are processed by the Department of Public Works, 111 Morphew St., San Rafael, CA.
- The project will be subject to SRMC 14.16.360 (Wireless Communications Facilities regulations) which require Use Permit and Environmental and Design Review Permit approvals for new wireless communications facilities. Zoning entitlement applications need to be submitted to the Department of Community Development, Planning Division with all submittal materials and fees. See additional comments regarding zoning entitlements below.

Community Development Department
1400 Fifth Avenue, P.O. Box 151560, San Rafael, CA 94915-1560
Phone: (415) 485-3085 • Facsimile: (415) 485-3184

Zoning Entitlements. The following zoning entitlements would be required for the project:

- Staff recommends a Master Use Permit and Environmental and Design Review Permit (Major Review) be pursued for the entire Lucas Valley Network system proposed within the City ROW, as allowed pursuant to SRMC 14.22.040; in lieu of submitting individual use permit applications for each site. Each site location will need to be identified on the application materials by the nearest address/marker and underlying Assessors Parcel Number, if any.
- If the Master Use Permit is pursued and granted for the Lucas Valley Network, each subsequent and individual node installation would be subject to staff level Environmental and Design Review permit approval prior to issuance of any permits authorizing work.
- A Separate Use Permit and Environmental and Design Review Permit approval would be required for a new "stand alone" pole or facility outside of public right of way.

Submittal Requirements. In addition to SRMC 14.16.360 submittal requirements, the City will also request the following:

- Peer review of the proposal, including technical documentation and requirements, to be conducted by a consulting engineer selected by the City and paid for by the applicant.
- Structural engineering calculations of existing utility poles demonstrating capability of existing infrastructure to support loads, noting any modifications required.
- Upgrade/replacement of poles proposed, as necessary, to address existing issues and/or accommodate the facility.
- If carrier contends the City is preempted from limiting placement of new equipment on existing poles, documentation must be provided to support such claim with formal application submittal.
- Carrier must demonstrate the proposal maximizes stealth opportunities, and propose the least obtrusive technologies and installation types.
- Copy of the CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) document / determination made by the PUC, acting as a lead agency for the project.
- ExteNet should further consider pursuing a public relations/information campaign in the area, prior to pursuing this project.

Preliminary Issues. The following specific policy and community issues have been raised:

- General Plan Policy I-4 (Utility Undergrounding) calls for undergrounding of overhead utility lines. The ExteNet proposal may be considered to impede or conflict with this requirement. ExteNet should be prepared to respond to this policy.
- This project will likely generate significant public interest, comments and concerns from citizens and various neighborhood groups within the City. Potential aesthetic impacts will be particularly relevant. The applicant should be prepared to address and respond to concerns with meaningful ways to minimize visual impacts and to justify the need for the proposed use within the City of San Rafael.

Hopefully, this information responds to your needs and questions. Please be advised that this letter is not intended to provide a comprehensive review of the project. Rather it is intended to help you identify procedural requirements and potential issues. Additional requirements or issues may be identified following comprehensive review of a formal application submittal.

Should you have any questions please do not hesitate to contact me at (415) 485-3092 or [Kraig Tambornini@cityofsanrafael.org](mailto:Kraig.Tambornini@cityofsanrafael.org).

Sincerely,



Kraig Tambornini
CITY OF SAN RAFAEL
Senior Planner

Copy to:

Extenet Systems
3030 Warrenton Rd, 340
Lisle, IL 60532



ATTACHMENT D – "What a Weekend! How would You Like a 60' tower in Your Backyard?"

What a weekend ! How would you like a 60' microwave tower in your backyard?

Our neighbors on the northern boundary of San Rafael---in the newly-consolidated 550-home-strong Mont Marin-San Rafael Park Neighborhood Association (www.MontMarin.org)---have taken steps to defend themselves! Under the able leadership of President Ray Lorber, they are calling for your support. We need to deliver a unified message via the North San Rafael Coalition of Residents to the City, County and those companies that would work in the public right-of-way:

- 1) Community engagement...based upon accurate, timely detailed information, mutual respect and trust...is mandatory;*
- 2) Building permits from the requisite Planning Departments, etc. are not optional; and*
- 3) Specific legal work orders are necessary, not optional. (It is not okay to begin marking the pavement and begin trenching upon submitting a vague pre-application, barge in--- again---on holiday weekends and attempt to work behind everyone's back.)*

(More on what we want concludes today's communication.)

Below is some of the detailed history of misdirection, trauma and unnecessary roughness that Mont Marin individuals, Board and Association has endured and overcome. Time, energy, funding and great goodwill have been expended to begin management of this fair situation.

A lot has happened this past weekend and this email is to inform our members of the activities on Cedar Hill Drive.

On Friday we noticed a significant increase of markings on the street. Underground Service Alert/Call Before You Dig had requested that the utility companies mark the location of their underground lines. The purpose of these markings is debatable, but the significant and sudden increase caused us to pursue an explanation.

By working with Kraig Tambornini in San Rafael's Planning Department, we learned that the City knew that there was a proposal by ExteNet <http://www.extenetsystems.com> to install a 60' cell tower at the top of Cedar Hill Drive at Coast Oak Way (and that they might run underground cables from the tower eastwardly to Las Gallinas Avenue). Yet, the application for this project had not even been submitted, much less reviewed and approved. Any form of trenching the streets would be unauthorized and premature. (Although at first it was thought that the 3 colors of markings on Cedar Hill Drive were for the purpose of analysis---in anticipation of submitting the mandatory application.)



Meanwhile, John Rojas (15-year leader of the North San Rafael Coalition of Residents and distinguished past President of Mont Marin began contacting his sources. Who had authorized the marking of Cedar Hill Drive? He found that the contractor, Western Lightwave Inc., had ordered it and they were planning to begin trenching on Monday (Martin Luther King, Jr. Day)---a national holiday when the City offices would be closed. Because we knew that neither ExteNet nor Western Lightwave Inc. had filed their applications, we decided to take action to prevent their trenching on Monday. Mont Marin had an emergency Board meeting on Saturday and planned their actions to prevent trenching. The *Marin Independent Journal* was contacted and the San Rafael Police Department was notified our readiness to take local civic action to stop the trenching. For the immediate neighbors on Coast Oak Way, Cedar Hill and Upper Oak Drives, Mont Marin President Ray Lorber held a town hall meeting. They met on January 16, 2011, a foggy Sunday afternoon, on the street where the 60' tower was to be erected on private property. Since most of the information had not yet verified (and since the application had not been filed), the discussion was based upon what *might* happen.

On Monday evening we learned that Western Lightwave Inc.'s work order <http://www.usanorth.org> for "directional boring for ung facilities" had been issued (with "County permit number pending") to begin trenching on Monday, January 17, 2011 at 8:00 a.m. But, due to prompt attentive action by Ray Lorber and others, the City had notified Extenet's contractors late on Friday, January 14th that they were not authorized to trench prior to filing their application and receiving a permit. Other member utility companies that were notified are Comcast, Las Gallinas Valley Sanitary District, Marin Municipal Water District, Pacific Bell Marin and PG&E Distr. San Rafael---for which relevant contact information is available.

The City's action was the direct result of our work to keep the two-way flow of communication and information among the City and members of the Coalition and the corporate interests working in our community. PG&E has issued an order this morning to stop all work on the ExteNet project. We can thank Nader Mansourian, San Rafael Director of Public Works for this.*

Today, Tuesday, January 18, 2011, Mont Marin and the North San Rafael Coalition of Residents representatives will be meeting with officials from the City. On the agenda is

- *how to prevent future failures of community engagement,*
- *how to clarify the process of infrastructure improvements, and*
- *what entitlements should be negotiated on behalf of the local residents.*

We recognize that confusion remains and the situation is quite fluid. Please let us know how you would like to be involved. We welcome your feedback, input, questions and concerns, e.g., what does PG&E have to do with cellular telephone service/iPhone service, etc.? Due to the volume of interested parties, we may have to provide FAQs at the www.MontMarin.org website, but we will do our best to communicate verified information in an effective and respectful manner.*

NORTH SAN RAFAEL COALITION OF RESIDENTS



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The North San Rafael Coalition of Residents is a 24-year veteran of representing the neighborhoods of the 94903 zip code, serving as an umbrella for some 42 homeowner and neighborhood associations. In addition to meeting monthly with governmental representatives to increase communication, together they have helped create numerous quality amenities in the annexed portions of San Rafael including: North San Rafael Vision (copies available), North San Rafael Promenade Vision & Design (copies available), Freitas Parkway/101 overpass studies, the Terra Linda Gateway at Freitas Parkway and Northgate Drive, the Skatepark facility at McInnis Golf Center & Park, Safe Passage on Lucas Valley Road (<http://blogspot.msn.safepassage.com>) and numerous other land use/built-environment/planning issues that impact the health, safety, beauty and quality of life in north San Rafael. It is currently governed by a Steering Committee chaired by Carolyn Lenert, CarolynLenert@msn.com, 415.499.9234.



**ATTACHMENT E – Tuesday January 18, 2011 Report to Community
Martin Luther King Weekend was a wild weekend for the residents of our
community.**

On Friday, Jan 14th at the close of day, we noticed workers painting multi-colored USA (Underground Service Alert) utility signs the length of Cedar Hill Drive. John Rojas began calling to see who had authorized the marking and found that an Illinois company, ExteNet, which provides Cell-WiFi towers and service to multiple companies nationally, had authorized a subcontractor, Western Lightwave, to dig deep new trenches the length of Cedar Hill Drive in preparation for an as yet unpermitted massive new Antenna Pole, next to the open space, some 60 feet or so high. Digging was scheduled for 8am Monday, Martin Luther King Day. Meanwhile Ray Lorber began checking with the city's staff to see if ExteNet was authorized to begin trenching. The Application to trench for this highly controversial project had not been submitted to San Rafael authorities, yet it was scheduled to happen on a holiday - when no one could respond.

The MM/SRPNA Board of Directors acted immediately, with an emergency Board meeting on Saturday and a Town Hall meeting on Sunday. Local residents, fully engaged, were considering direct confrontation with the construction crews, and asked for police protection.

Based on urgent phone calls to, Kraig Tambornini, Senior Planner, City of San Rafael, we were able to put a stop order in to ExteNet and their subcontractors before the digging began, allowing President Ray Lorber, Coalition Chair Carolyn Lenert, John Rojas and others to meet with key San Rafael officials Tuesday, January 18, to learn more.

In the meeting, Jim Schutz, Interim City Manager, Nader Mansourian, Director of Public Works, Kraig Tambornini, and Police Chief Matt Odetto assured your neighborhood representatives that the proposed action by the subcontractor was stopped, and would not be considered until the complete application, review, public hearing, and Planning Commission process has been followed.

.....



ATTACHMENT F – City of "San Rafael's 2005 Telecommunication Ordinance

See link

http://www.cityofsanrafael.org/Government/Community_Development/Cell_Antenna_Test_Results.htm

“Telecommunication Antennas

The federal Telecommunications Act of 1996 regulates the telecommunications industry. A principal objective of the Act was to promote a pro-competitive, deregulatory environment for telecommunications providers, intended to secure lower prices, better service, and faster access to new technologies for consumers.

The Act precludes local regulations which “prohibit the ability of any entity to provide any interstate or intrastate telecommunications service.” More specifically, the Act states, “No state or local government may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission’s regulations concerning such emissions.” Court cases have confirmed that cities may not impose any limitations or restrictions on the establishment or location of wireless telecommunication facilities based on concerns about the health effects of radio frequency (RF) emissions.

In summary, the Act allows the City to:

§ Regulate the location and design of new telecommunication antennas, so long as these regulations do not preclude an operator from providing service to all areas of the community.

§ Assure that telecommunications facilities operate within the established radio frequency (RF) emission standards established by the Federal Communications Commission (FCC).

The City’s regulations for antennas are contained in Section 14.16.360. These regulations indicate the City’s preference to:

§ Co-locate new antennas on existing poles rather than erecting new facilities,

§ Locate antennas in non-residential areas, or demonstrate that adequate coverage cannot be achieved by placement in such locations before consideration for facilities in residential or open space areas, and

§ Disguise the appearance of antennas by using “stealth design” where antennas are incorporated into building design elements, as simulated vegetation, etc.

The City of San Rafael is one of very few cities in the nation that require City-administered testing of RF emissions from all telecommunication antennas in the community every three years to assure that they are operating within the RF emission standards established by the Federal Communications Commission. The results of these RF tests are available for review in the Planning Division.”



[San Rafael, California, Code of Ordinances](#) >> [Title 14 - ZONING*](#) >> [Division IV - REGULATIONS APPLYING IN ALL OR SEVERAL DISTRICTS](#) >> [Chapter 14.16 - SITE AND USE REGULATIONS](#) >>

[Chapter 14.16 - SITE AND USE REGULATIONS](#)

Section:

[14.16.360 - Wireless communication facilities.](#)

A.

Purpose. This section establishes standards to regulate the design and placement of towers, antennas, and other wireless communication transmission and/or reception facilities (hereinafter called wireless communication facilities) on public and private property to minimize the potential safety and aesthetic impacts on neighboring property owners and the community. To fulfill this purpose, this section is intended to:

1.

Establish development standards to regulate the design and placement of wireless communication facilities so as to preserve the visual character of the city and to ensure public health and safety, consistent with federal law and Federal Communication Commissions (FCC) regulations.

2.

Acknowledge the community benefit associated with the provision of wireless communication services within the city.

3.

Encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers.

B.

Permits Required. A use permit and an environmental and design review permit shall be required for new wireless communication facilities pursuant to the requirements of [Chapter 14.22](#), Use Permits, and [Chapter 14.25](#), Environmental and Design Review Permits, consistent with the provisions of this section. Minor additions or modifications to existing permitted facilities that will not significantly affect radio frequency radiation (RFR) emissions nor cause increased visual impacts may be exempted from the requirements of a use permit by the community development director. In such case, the minor addition or modification shall be subject to an administrative-level environmental and design review permit.

C.

Application Requirements. Applications for a use permit and an environmental and design review permit shall be initiated by submitting the following information:

1.

A completed application form, signed by the property owner or authorized agent, accompanied by the required fee. Application procedures and processing timeframes shall be in accordance with state law requirements and the procedural guidelines established by the community development director.

2.

Six (6) sets of materials and plans showing the following information:

a.



Project Description. A complete project description, including the following information on the proposed wireless communication facility:

- i.**
Number and sizes of antennas and approximate orientation,
- ii.**
Other technical information regarding transmission equipment such as maximum power output and frequencies,
- iii.**
Copy of FCC license,
- iv.**
Heights of proposed facilities,
- v.**
Equipment enclosure type and size,
- vi.**
Materials and colors of antennas and any equipment enclosure,
- vii.**
Description of towers or other structures necessary to support the proposed facilities, and
- viii.**
Description of lighting, signage and landscaping proposed.

b.
Site Plan. A site plan on a twenty-four-inch-by-thirty-six-inch (24" x 36") sheet of paper and an eleven-inch-by-seventeen-inch (11" x 17") reduction, including the following information:

- i.**
Vicinity map,
- ii.**
Parcel lines of the subject parcel,
- iii.**
Contextual map showing structures on adjacent properties,
- iv.**
Location and names of adjacent streets and drives proposed to serve as access to the facility,
- v.**
Topography of the subject parcel and location of any drainages within or adjacent to the site,
- vi.**
Location of all existing buildings, structures, utilities, parking areas, significant trees and other natural forms, or other features which might affect the proposed use of the property,
- vii.**
Setbacks of proposed structures and improvements from the property lines,
- viii.**
Location and height of required cuts and fills for the grading of land and any retaining walls proposed,
- ix.**



Location of proposed development including all towers, structures, buildings, utility line extensions, driveways or roads, and parking areas,

x.

Schematic drainage and grading plan, and

xi.

North arrow, graphic scale, the applicant's name, assessor's parcel number and date prepared.

c.

Elevations. Elevations set forth on a twenty-four-inch-by-thirty-six-inch (24" x 36") sheet of paper, and an eleven-inch-by-seventeen-inch (11" x 17") reduction, including the following information:

i.

Elevations and sections of the site displaying site topography, proposed facilities including towers, equipment shelter and existing buildings,

ii.

Wall, roof, tower and antenna materials,

iii.

Fencing, air conditioning units and outdoor lighting, if any,

iv.

Rooftop or building features such as vents, chimneys and antennas, and

v.

Building or tower height as measured from natural grade.

d.

Photo-Simulations. Photo-simulations of the proposed facility from key public viewpoints based upon consultation with city staff. Photo-simulations shall display existing and proposed views in an eleven-inch-by-seventeen-inch (11" x 17"), or larger, format, with the dates shown when the base photo was taken.

e.

Landscape Plan. A landscape and irrigation plan, showing all existing and proposed improvements, location of proposed plantings and type of landscape material, for proposed ground-mounted facilities including equipment cabinets.

3.

Alternative Site Analysis. An alternative site analysis is required if the proposed facility is:

a.

Located within any district other than a commercial or industrial district;

b.

Located within fifty feet (50') of a "Less Preferred Location," as defined in subsection (G)(2) of this section;

c.

Lacking stealth design; or

d.

Not co-located with an existing approved facility.

The alternative site analysis shall be presented in a narrative form with supporting maps and other graphics that identify the other site locations considered and rejected in favor of the proposed site. The applicant shall provide supporting reasons why the alternate



sites were infeasible and rejected and why the proposed site is superior from a technical or other standpoint to the others considered.

4.

Future Co-Location. For new towers or monopoles, a signed statement that the applicant, or its future successors, will cooperate with the city to allow future co-location of antennas at the proposed site if it is approved.

5.

Story Poles. Story poles or mock-ups may be required if deemed necessary by the community development director.

6.

RFR Study. For the sole purpose of verifying compliance with the FCC radio frequency emission standards, an emissions report which measures the predicted and actual, if available, levels of electromagnetic field radiation emitted by the proposed facility operating alone and in combination with radiation emitted from other existing or approved facilities that can be detected at the proposed facility site. Radiation measurements shall be based on all proposed (applications filed and pending), approved, and existing facilities operating at maximum power densities and frequencies. It is the responsibility of the applicant to determine the location and power of existing facilities.

7.

Noise Analysis. A noise analysis for emergency generators or other noise-producing facilities.

D.

Review Authority. Authority over the provisions and requirements of this section shall lie with the following official bodies or officials:

1.

Community Development Director. The community development director or his or her designee has the authority to:

a.

Exempt applications for minor additions or modifications to existing permitted facilities that will not significantly affect RFR emissions nor cause increased visual impacts from the requirement for a use permit, and take action to approve, conditionally approve or deny an administrative-level environmental and design review permit;

b.

Refer applications to the design review board for advisory review and recommendation; and

c.

Refer applications to the planning commission for review and action.

2.

Design Review Board. The design review board shall serve as an advisory body to the planning commission, zoning administrator or community development director on all use permit and environmental and design review permit applications with the exception of applications for minor additions or modifications to existing permitted facilities, as described in subsection (D)(1) of this section, which are subject to an administrative level environmental and design review permit.

3.



Planning Commission. The planning commission has the authority to approve, conditionally approve or deny use permit and environmental and design review permit applications for the following:

a.

New ground-mounted facilities (towers or monopoles);

b.

Any facility, which in conjunction with existing facilities in the area, exceeds seventy-five percent (75%) of the FCC standard for public exposure; and

c.

Any application referred to them by the community development director.

4.

Zoning Administrator. The zoning administrator has the authority to approve, conditionally approve or deny use permit and environmental and design review permit applications for the following:

a.

Co-located facilities on an existing approved structure; and

b.

Building-mounted facilities.

5.

Appeals. All decisions of the community development director, zoning administrator or the planning commission can be appealed in accordance with the provisions of [Chapter 14.28](#), Appeals.

E.

Exemptions. The following types of facilities are exempt from the provisions of this section:

1.

Facilities for which applications were approved by the city and/or building permits were issued on or prior to the effective date of this section shall be exempt from the requirements of this section, except for the requirements for validation of proper operation, monitoring, and removal of abandoned facilities, and for proposed modifications to existing facilities;

2.

Facilities owned and operated by public agencies; and

3.

Proposed facilities that would be located entirely within a building and only serve that building.

F.

Public Notice. Notice of a public meeting or hearing for a wireless communication facility shall be given in accordance with [Chapter 14.29](#), Public Notice, except that a public notice shall be mailed to all property owners within one thousand feet (1,000') of any proposed facility that includes a tower or monopole.

G.

General Location Standards. The most desirable location for new wireless communication facilities is co-location on existing facilities or buildings. All wireless communication facilities shall be sited to avoid or minimize land use conflicts in compliance with the following standards:



1.

Preferred Locations. The following list of preferred locations for wireless communication facilities is in order of preference from most to least preferred: Industrial, public or quasi-public, commercial and office zoning districts are the preferred locations.

2.

Less Preferred Locations. The following less preferred locations are listed in order of preference from most to least preferred: Parks or open space and residential zoning districts.

3.

Avoid Residential and Open Space Areas. New monopoles or towers shall not be located within residential, designated open space or conservation areas unless sufficient technical and other information is provided to demonstrate to the satisfaction of the planning commission or zoning administrator that location in such areas is appropriate, subject to the following findings:

a.

The location of the proposed facility site is essential to meet the service demands of the carrier and no other alternative co-location, existing development or utility facility site, or type of antenna support structure is feasible. This shall be documented by the applicant providing a list of the locations of preferred technically feasible sites, the good faith efforts and measures taken by the applicant to secure these preferred sites, and the specific reasons why these efforts and measures were unsuccessful.

b.

The use of a monopole for the proposed facility by itself or in combination with other existing, approved, and proposed facilities will avoid or minimize adverse effects related to land use compatibility, visual resources and public safety.

4.

Avoid Significant Buildings and View Sheds. Wireless communication facilities shall not be located on historically or architecturally significant structures unless visually and architecturally integrated with the structure, and shall not interfere with prominent vistas or significant public view corridors.

H.

Design Requirements.

1.

Co-Location. All new wireless communication facilities service providers shall co-locate with other existing and/or planned new wireless communication facilities whenever feasible. Service providers are encouraged to co-locate with other existing facilities such as water tanks, light standards and other utility structures where the co-location is found to minimize the overall visual impact of the new facility.

2.

Stealth Design. All wireless communication facilities shall have a stealth design to screen or reduce visual impacts and blend the facility into the existing environment. Examples of stealth design are facade-mounted antennas located within architectural features so they are screened from view, or an antenna design that mimics architectural features so they appear to be a part of the building design, or facilities with colors and materials to minimize visibility such as a non-reflective finish in a color compatible with the surrounding area.



3.

Ground-Mounted Facilities. All new ground-mounted wireless communication equipment, antennas, poles, dishes, cabinet structures, towers or other appurtenances shall be:

a.

Co-located on existing structures to the extent feasible. Co-location is preferred over new monopoles or other towers erected specifically to support wireless communication facilities unless technical evidence demonstrates that there are no other alternative sites or feasible support structures or the use of a monopole or tower would avoid or minimize adverse effects related to the view shed, land use compatibility, visual resources and public safety.

b.

Sited to be screened by existing development, topography or vegetation to the extent consistent with proper operation of the wireless communication facility. Additional new, irrigated vegetation, or other screening, may be required as a condition of approval:

4.

Roof and Building-Mounted Facilities. Roof and building-mounted antennas and equipment shall be:

a.

Sited and designed to appear as an integral part of the structure or otherwise minimize their appearance. Placing roof-mounted antennas in direct line with significant view corridors shall be avoided. Where appropriate, construction of a rooftop parapet wall to hide the facility may be required.

b.

Integrated architecturally with the style and character of the structure or otherwise made as unobtrusive as possible. If possible, antennas shall be located entirely within an existing or newly-created architectural feature so as to be completely screened from view. To the extent feasible, building-mounted antennas shall not be located on the front, or most prominent facade of a structure, and shall be located above the pedestrian line-of-sight.

c.

Whenever possible, base stations, equipment cabinets, back-up generators, and other equipment associated with building-mounted antennas shall be installed within the existing building or underground. If this is not feasible, the equipment shall be painted, screened, fenced, landscaped or otherwise treated architecturally to minimize its appearance from off-site locations and to visually blend with the surrounding natural and built environment.

5.

Signage. No advertising signage or identifying logos shall be displayed on any wireless communication facility except for small identification plates used for emergency notification and legally required hazard warnings.

6.

Waiver Request. A waiver from these requirements may be requested if the applicant can show, by substantial evidence, that compliance with a particular requirement is technologically infeasible or would result in an unreasonable interference with signal



quality. The applicant will be required to prove that there are no feasible alternatives to the waiver request.

I.

Development Standards.

1.

Height. The maximum height of building-mounted antennas shall be in compliance with the height limitations for the zoning district in which they are located. An exception to antenna height may be granted by the planning commission or zoning administrator if the RFR exposures and aesthetic quality of the proposed facility are found to be acceptable. Antenna structures, including towers and monopoles, and mechanical screening features related to wireless communication facilities, shall be regulated subject to Section [14.16.120](#) of this chapter.

2.

Setbacks.

a.

Towers, guy wires, and accessory structures, including equipment cabinets, shall comply with the setback requirements of the applicable zoning district. Towers and support structures shall be located a minimum of two hundred feet (200') or at least three (3) times the height of the tower, whichever is greater, from existing residential units or vacant residentially zoned property.

b.

Building-mounted facilities may be permitted to extend up to two feet (2') horizontally beyond the edge of the structure regardless of setback requirements through the application review process, provided that the antenna does not encroach over an adjoining parcel or public right-of-way or otherwise create a safety hazard.

J.

Lighting. Any exterior lighting shall be manually operated, low wattage, and used only during night maintenance or emergencies, unless otherwise required by applicable federal law or FCC rules. The lighting shall be constructed or located so that only the intended area is illuminated and off-site glare is fully controlled.

K.

Landscaping. Wireless communication facilities shall be installed in a manner that maintains and enhances existing vegetation and provides new landscape material to screen proposed facilities through the following measures:

1.

The emphasis of the landscape design shall be to visually screen the proposed facility and stabilize soils on sloping sites. Introduced vegetation shall be native, drought tolerant species compatible with the predominant natural setting of the adjacent area.

2.

Existing trees and other screening vegetation in the vicinity of the proposed facility shall be protected from damage both during and after construction. Submission of a tree protection plan prepared by a certified arborist may be required.

3.

All vegetation disturbed during project construction shall be replanted with compatible vegetation and soils disturbed by development shall be reseeded to control erosion.

4.



Appropriate provisions for irrigation and maintenance shall be identified in the landscape plan. The city may impose a requirement for a landscape maintenance agreement as a condition of approval.

L.

Noise. Wireless communication facilities shall be constructed and operated in a manner that minimizes noise. Noise reduction shall be accomplished through the following measures:

1.

Wireless communication facilities shall operate in compliance with the noise exposure standards in San Rafael Municipal Code [Chapter 8.13](#), Noise.

2.

Normal testing and maintenance activities shall occur between eight a.m. (8:00 a.m.) and six p.m. (6:00 p.m.), Monday through Friday, excluding emergency repairs.

3.

Backup generators shall comply with the same noise standards referenced in subsection (L)(1) of this section and shall only be operated during power outages, emergency occurrences, or for testing and maintenance.

M.

Radio Frequency Radiation (RFR).

1.

RFR Standards. Wireless communication facilities operating alone and in conjunction with other telecommunication facilities shall not produce RFR in excess of the standards for permissible human exposure as adopted by the FCC.

2.

RFR Report. Applications for wireless communication facilities shall include a RFR report, prepared by a qualified expert, which identifies the predicted and actual (if available) levels of RFR emitted by the proposed facility operating by itself and in combination with other existing or approved facilities which can be measured at the proposed facility site. Measurements for RFR shall be based on all proposed, approved, and existing facilities operating at maximum power densities and frequencies.

N.

Post-Approval Requirements.

1.

Validation of Proper Operation. Within forty-five (45) days of commencement of operations, the applicant for the wireless communication facility shall provide the community development department with a report, prepared by a qualified expert, indicating that the actual RFR levels of the operating facility, measured at the property line or nearest point of public access and in the direction of maximum radiation from each antenna, is in compliance with the standards established by the FCC for RFR.

2.

Three-Year Review. The city will notify all owners or operators of wireless communication facilities every three (3) years that they shall participate in the measurement by the city of the RFR of the facility. The requirement for a three-year review shall be made a condition of approval for all wireless communication facilities. The city will contract to perform the testing with a qualified expert and the owners or



operators shall bear the proportionate cost of testing for its facility. The city will establish procedures for:

- a.**
Scheduling the three-year review period;
- b.**
Hiring an expert to perform RFR testing;
- c.**
Collecting reasonable fees; and
- d.**
Enforcement actions for nonpayment of fees.

3.
Notification of Abandonment of Use. The owner or operator of an approved wireless communication facility shall remove any abandoned facilities or restore the existing approved use of a facility within ninety (90) days of termination of use.

4.
Changes Affecting RFR. Any operational or technological changes to an approved wireless communication facility affecting RFR exposures shall be reported promptly to the city, including any change of ownership. The city may require new RFR testing within forty-five (45) days of notification.

5.
Changes to FCC Standards. Owner or operators of all approved wireless communication facilities shall make necessary changes or upgrades to their facilities in order to comply with any newly adopted FCC standards for RFR. Upgrades to facilities shall be made no later than ninety (90) days after notification of the changed FCC standards and the owner or operator shall notify the city in writing that the upgrades have been completed.



ATTACHMENT G – Our Community Concerns

As a result of our experience with broadband deployment, our community's concerns are:

- I. **SAFETY.** Our poles are 50 to 60 years old and are already leaning and breaking and cannot withstand additional loading for broadband deployment. They are leaning all over and falling down but anchoring the existing poles creates more visual blight and new easements onto private property. As a result, we have safety problems and service interruptions.
- II. **LEGALITY & CONSTITUTIONALITY.** Categorical preemption of local regulation is unconstitutional. The licenses granted by the FCC “shall not be construed to deny or disparage others retained by the People” (9th Amendment). “The powers not delegated to the United States by the Congress, nor prohibited by it to the State, are reserved to the states respectively or the People” (10th Amendment). Also see Appendix H “Email from Patti Ringo to Ray Lorber dated January 25, 2011 re Regulatory Requirements Request.” ExteNet illegally used the Public Utilities Commission General Order 170 (see email attached) to violate the the City of San Rafael’s 2005 Telecommunication Ordinance asserting that “the regulatory structure under which we work prohibits us from conforming with the local requests.” ExteNet initiated installations without permits (see Appendix C attached).
- III. **A TAKING.** The Fifth Amendment provides that private property shall not be taken without “...due process of law; nor shall private property be taken for public use without just compensation.” Broadband infrastructure causes real estate devaluation and subsequential losses of tax revenue from property. Communities must be allowed exactions for infrastructure entitlements. We call on ExteNet to make an annual contribution of \$2,500 per new utility pole per year via our nonprofit 501 c 4 status (until removed or undergrounded) to promote community beauty and engagement.
- IV. **SUPERFLUITY & REDUNDANCY.** A national monopoly for infrastructure is needed; not multiple forms of infrastructure: We don’t have 50 telephone companies with 50 poles each on our street.
- V. **OBSOLESCENCE.** We want a written guaranty (and an amount in escrow) that the above-ground poles, pole extensions (if any), cables, meters, antennas, cabinets, emergency batteries, wires and equipment, etc. will be promptly removed when obsolete.
- VI. **BEAUTY.** Broadband infrastructure is visual blight and cabling should be undergrounded; and other facilities should be located in a manner that does



not adversely impact the surrounding neighborhood or protected view corridors.

- VII. **COMMUNICATION & COMMUNITY ENGAGEMENT.** We were refused full access to public records at County and are entitled to direct communication from infrastructure provider. The 24-year old North San Rafael Coalition of Residents and most of its County member organizations did not receive a copy of the ExteNet application and its attachments. We need one ExteNet contact and 24/7 telephone number in case of emergency (during installation and for the future). This information would be affixed to each modified and/or new pole. The provider should engage in community outreach.
- VIII. **VIOLATION OF STATE LAW.** California Environmental Quality Act applies per paragraph 1 of the City of San Rafael letter from Kraig Tambornini, Senior Planner to Patti Ringo of ExteNet dated April 20, 2011 (copy enclosed as Appendix C). In Lucas Valley, the Project should not be categorically exempt from CEQA, but rather excepted from Article 19 exemptions under the CEQA Guidelines. This community's utilities are underground; and Applicant's equipment will adversely affect the character of the community. The project is unsightly and equipment boxers impair vehicle sight lines as well.
- IX. **ACCESS TO ACCURATE & SPECIFIC PLANS.** Accurate graphics/photo-sims (including the necessary fiber optic cables), and up-to-date maps of the site locations have not been available to date and should be provided. Radio Frequency Radiation Reports (RFR) are lacking. The community has not received (or been given access to) any RFR analyses as required. SiteSafe Site Compliance Reports are unavailable to date and should be provided. We note that USA North has no record of proposed project installations at least one proposed new pole location.
- X. **REPONSE TIME.** The City of San Rafael Planning Department and the neighborhood should be given at least 22 business days to respond. In light of increasingly common City furlough schedules, we recommend extending the public comment period.



APPENDIX H – Email from Patti Ringo, ExteNet Marketing Rep. to Ray Lorber dated January 25, 2011 re Regulatory Requirements Request

From: Patti Ringo <paringo@extenetsystems.com>

Subject: RE: FW: Regulatory requirements request

To: "Ray Lorber" <raylorber@yahoo.com>

Date: Tuesday, January 25, 2011, 11:29 AM

Mr. Lorber,

I understand now.

Yes, ExteNet Systems is a State-regulated telecommunications carrier. Our permits within cities varies, but is mostly in a ministerial vein. That is, we apply for Encroachment, Excavation and sometimes Electrical permits. Many cities would like us to go through a full Planning process. While the State of California has decreed that they are the only agency that can perform a discretionary review on a project, there have been cases where we have agreed to go through some form of discretionary review at a local level. We do want to work with the neighborhoods to the best of our abilities. In some cases, however, the regulatory structure under which we work prohibits us from conforming with the local requests. We do try to be good neighbors, though. Here is the most recent information on that rule, which is provided in the California Public Utilities Commission's General Order 170 information:

"As provided in GO 170, this Commission is the only agency that can issue discretionary permits for telecommunications projects because deployment of telecommunications infrastructure is a matter of statewide concern. Although additional authorization for ministerial permits may be required from other state agencies or local authorities, this Commission is best suited to issue the only required discretionary permits and to evaluate the physical change in the environment caused by telephone corporations' construction projects due to our extensive experience with such facilities and the state-wide interest in encouraging deployment. Local Agencies may not use their discretionary land use authority to effectively prohibit projects that are in compliance with the operating authority granted by the Commission. However, telephone corporations must obtain any ministerial permits required by the applicable local agency. If a locality believes that a carrier is acting unreasonably, the proper way to address this issue is for the locality to file a complaint with the Commission."

Dec. No. 10-12-056, p. 30.

I assume this inquiry is in relation to the project that spans three jurisdictions in the Marin County area? I believe you may live in the San Rafael area? If you would like to call me and discuss your concerns, I will be happy to listen and see with what I can assist you. My number is below.

Patti Ringo

(805) 404-4202